In the Supreme Court of the United States

OCTOBER TERM, 1968

No. 1226

GREENWOOD MUNICIPAL SEPARATE SCHOOL DISTRICT, ET AL., PETITIONERS

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 27–40) is reported at 406 F.2d 1086. The opinions of the district court (Pet. App. 44–52) are not reported.

JURISDICTION

The judgment of the court of appeals (Pet. App. 41–42) was entered February 4, 1969 and rehearing was denied on March 5, 1969 (Pet. App. 43). The petition for a writ of certioriari was filed on April 3, 1969. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

349-602—69

QUESTIONS PRESENTED

1. Whether the defendants in a school desegregation case instituted by the United States are entitled to compel disclosure of the specifics of the written complaints upon which the Attorney General bases his certificate pursuant to Section 407 of the Civil Rights Act of 1964 (42 U.S.C. 2000c–6(a)).

2. Whether the court of appeals was correct in disapproving the pupil and teacher assignment provisions of the petitioners' school desegregation plan which allow the continuation of some all-white and all-Negro schools, and requiring that more effective provisions be devised to insure the eradication of the racial identity of the petitioners' schools.

STATEMENT

This suit, seeking the desegregation of the public schools of Greenwood, Mississippi, was filed by the United States in July, 1966, pursuant to Title IV of the Civil Rights Act of 1964 (42 U.S.C. 2000c–6(a) and (b)). Attached to the complaint was a certificate executed by the Attorney General in accordance with Section 407(a) of the Act. A supplemental certificate executed by the Attorney General was filed on August 22, 1966. These certificates (set out in the opinion of the court of appeals, Pet. App. 29–30) recite that the Attorney General had received complaints in writing from parents of children in the Greenwood school district alleging that they were being denied the equal protection of the laws and that the petitioners had been advised of the complaints and afforded adequate time to remedy the violation. The Attorney General further

certified that the complainants were unable to initiate and maintain appropriate legal proceedings for relief because, *inter alia,* to do so "would jeopardize the personal safety and economic standing of the complainants, their families, and their property."

The district court denied the petitioners' attempts to compel the Attorney General to disclose the identity of the complainants and the specifics of the complaints referred to in his certificates.

After a hearing on the merits, on August 26, 1966, the district court ordered the petitioners to adopt and submit to the court a desegregation plan. The plan submitted by the petitioners provided for the assignment of pupils on the basis of freedom of choice to all schools of the system, except one elementary school, to which students were to be assigned on the basis of a geographic zone. The United States objected to several aspects of the free choice provisions of the plan and also to the geographic attendance zone on the grounds that, as only white students lived within the zone, it assured the perpetuation of the school as an all white school.

On September 1, 1966, the district court entered an order modifying some aspects of the free choice provisions of the plan and giving interim approval to the geographic attendance zone. Subsequently, the district court approved the use of the attendance zone for the remainder of the 1966–67 school year.

In April 1967, following the decision of the Court of Appeals for the Fifth Circuit in *United States* v. *Jefferson County Board of Education,* 372 F. 2d 836, affirmed en banc, 380 F. 2d 385, certiorari denied *sub*

nom. Caddo Parish School Board v. *United States*, 389 U.S. 840, the United States moved in the district court for supplemental relief, requesting that petitioners' desegregation plan be conformed to the model decree fashioned by the court of appeals in *Jefferson*.

In September 1967, the district court, by letter, advised the parties of its final approval of the attendance zone, and directed certain modifications of the petitioners' plan to conform to the model *Jefferson* decree.

Both parties filed notices of appeal in November 1967. Prior to the filing of briefs and oral argument before the court of appeals, this Court decided *Green* v. *County School Board of New Kent County*, 391 U.S. 430, and companion cases. In the court of appeals, the United States urged that, in light of the *Green* decision and the failure of the pupil assignment provisions of petitioners' plan to disestablish the dual system of schools, the case should be remanded to the district court for entry of an order directing defendants to adopt a new pupil assignment plan. The United States also requested that the petitioners' "affirmative duty" to integrate the faculties of each of its schools be established.

On February 4, 1969, the court of appeals reversed the district court and directed that the district court require petitioners to devise a new desegregation plan with respect to pupil and faculty assignments. A petition for rehearing was denied on March 5, 1969, and the present petition for writ of certiorari followed.

ARGUMENT

1. The courts below were correct in holding that a certificate executed by the Attorney General under Section 407(a) is conclusive on the courts and the parties, and that the United States may not be required to reveal either the identities of the complainants or the specifics of their complaints.

This position is clearly in accord with the legislative history of Section 407, and the overwhelming weight of judicial authority. As the opinion of the court of appeals sets out, the House Report on the legislation states that "[i]t is not intended that determinations on which the certificate was based should be reviewable." H. Rep. No. 914, 88 Cong., 1st Sess., pp. 23–24; see also, statement of Senator Humphrey, Senate floor manager of the bill, at 110 Cong. Rec. 6543, March 30, 1964. Furthermore, the Senate rejected several amendments which would have specifically required the Attorney General, before bringing suit, to satisfy the court "by competent evidence" of the truth of his findings. 110 Cong. Rec. 13826–27 (June 15, 1964).

In at least eleven other school desegregation cases,[1] federal district courts in the Fourth, Fifth and Eighth

[1] *United States* v. *Natchez School District*, 12 Race R.L.R. 1315 (S.D. Miss.); *United States* v. *Junction City School District*, 253 F. Supp. 766 (W.D. Ark.); *United States* v. *Philadelphia School District*, C.A. No. 1,368(E) (S.D. Miss., letter opinion of September 24, 1967): *United States* v. *St. Bernard Parish School Board*, C.A. No. 16,323 (E.D. La., May 2, 1966); *United States* v. *Plaquemines Parish School Board*, C.A. No. 66–71 (E.D. August 5, 1966); *United States* v. *Indianola School District*, C.A. No. GC–6637 (N.D. Miss. 1966); *United States* v.

Circuits have ruled that the defendants may not obtain the information on which the Attorney General premised his certificate, and in only one instance has a district court required disclosure, on the theory that, in some unspecified way, it might assist defendants in preparing for trial. *United States* v. *School District No. 1, Lexington County,* 40 F.R.D. 391 (D.S.C. 1966).

As the court of appeals pointed out, petitioners could hardly assert, twelve years after the decision of this Court in *Brown* v. *Board of Education,* 347 U.S. 483, that, unless they were advised of the specifics of complaints received by the Attorney General, they were ignorant of the conditions in the school system which denied students equal protection of the laws, or that they had not been accorded a reasonable period of time in which to deal with them. Moreover, the certificate is only jurisdictional and at the hearing the United States was, of course, required to prove the allegations of its complaint that petitioners were operating an unconstitutional, racially segregated, school system. Petitioners had full opportunity to offer evidence that such allegations were without merit.

2. In light of this Court's decisions in *Green* v. *County School Board of New Kent County,* 391 U.S.

Humphreys County School District, C.A. GC-6645 (N.D. Miss. 1966); *United States* v. *Crawfordsville School District No. 2,* C.A. No. J-66-C-38 (E.D. Ark., 1966); *United States* v. *Jones County Board of Education,* C.A. No. 732 (E.D.N.C. 1968); *United States* v. *Northampton County Board of Education,* C.A. No. 1025 (E.D.N.C. 1967); *United States* v. *Bertie County Board of Education,* C.A. No. 632 (E.D.N.C. 1968).

430, and *Raney* v. *Board of Education of the Gould School District,* 391 U.S. 443, decided while this case was on appeal, it was appropriate for the court of appeals to direct that on remand petitioners be required to adopt a completely new pupil assignment plan.

In *Green* and *Raney,* the free choice desegregation plan had resulted in approximately 15% of the Negro students enrolled in formerly white schools and no whites attending Negro schools. This Court concluded that the school systems remained dual systems and that the school boards were required to abandon free choice and formulate new plans which promised to convert to systems "without a 'white' school and a 'Negro' school, but just schools." *Green, supra,* at 442.

The record here makes it clear that this case is squarely governed by *Green* and *Raney.* In the petitioners' system, only 18 of the 3,000 Negro students of the district were enrolled in formerly white schools during the 1967–68 school year,[2] and no white students attend Negro schools. Thus, the court of appeals properly held that a new plan of pupil assignment was required because the existing one "has produced so little in the way of meaningful desegregation." (Pet. App. A, pp. 34–35.)

3. Finally, the court of appeals was correct in directing that further steps in the area of faculty de-

[2] The following number of Negro pupils, out of the 3,000 Negro pupils in the district, attended white schools for each of the schools years indicated:

1966–1967	9	.3%
1967–1968	18 or	.6%
1968–1969	51 or	1.8%

segregation were required of petitioners. The affirmative obligation of school boards to eliminate the dual school system "root and branch," *Green, supra,* at 438, necessarily requires desegregation of faculties and staffs.

While requiring in each of its interim orders and its final order that race "shall not be a factor" in the employment and assignment of faculty and staff, the district court did not clearly place upon the petitioners a mandatory obligation to achieve integrated faculties in each of its schools. As a result, no Negro teachers were assigned to traditionally white schools and only three white educational supervisors and a white nurse had been assigned to the all-Negro schools. The court of appeals properly concluded that "[t]he board's responsibility is not optional" but that it had an "affirmative duty" to achieve faculty desegregation. This holding conforms with the decisions of this Court. See *e.g., Bradley* v. *School Board,* 382 U.S. 103; *Rogers* v. *Paul,* 382 U.S. 198; and *Green* v. *County School Board, supra.*

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the petition for a writ of certiorari should be denied.

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MAY 1969.

U.S. GOVERNMENT PRINTING OFFICE: 1969